

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WANDA SEALEY,

Plaintiff,

v.

D. OLSZEWSKI, D. SPEYER, K. OLIVER, and
R. RATAJCZAK,

Defendants.

DECISION AND ORDER
14-CV-3S

Presently before this Court is Plaintiff Wanda Sealey's Motion for Leave to Proceed with the Amended Complaint and for Default Judgment. (Docket No. 17.) This motion must be denied because Sealey's amended complaint (Docket No. 16) does not comport with this Court's previous Decision and Order and the leave granted therein to amend. (Docket No. 15.)

This Court previously dismissed all claims against the State of New York, the Superintendent of Wyoming Correctional Facility, and Sergeant Osborne. (Docket No. 15.) It further found that Sealey had cognizable claims under the First and Fourteenth Amendments and it granted Sealey leave to amend her Fourteenth Amendment equal protection claims to add further facts in support thereof. (Docket No. 15.) This Court dismissed all other claims, including Sealey's Fourth Amendment and § 1983 conspiracy claims. (Docket No. 15.)

Plaintiff's amended complaint, however, does not comport with this Court's decision. It continues to include claims against the Superintendent of Wyoming Correctional Facility and Sergeant Osborne (Amended Complaint, Docket No. 16, ¶¶ 5,

6); it contains facts in support of dismissed claims (id. at ¶¶ 21, 22); and it asserts claims that have been dismissed and new claims for which leave to amend was not and is not granted (id. at ¶¶ 30, 31, 32, 33, 35, 36). Consequently, Sealey cannot proceed on this amended complaint.

To move forward, Plaintiff must file a second amended complaint that comports with this Court's previous Decision and Order. She can accomplish this by simply striking the paragraphs referenced in the preceding paragraph. Sealey is advised that her second amended complaint will completely replace her amended complaint so it must contain both of her claims and all allegations in support thereof. The second amended complaint must also comply with the requirements of Rule 15.

IT HEREBY IS ORDERED, that Plaintiff's Motion for Leave to Proceed with the Amended Complaint and for Default Judgment (Docket No. 17) is DENIED.

FURTHER, that Plaintiff is granted leave to file a second amended complaint consistent with this Order and this Court's previous Decision and Order (Docket No. 15) within 45 days of the entry date of this Order.

SO ORDERED.

Dated: February 29, 2016
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge